

CHAPTER 844 Utility Service Tax

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CROSS REFERENCES

Consumer utility taxes - see Code of Virginia, §§58.1-3812 to 58.1-3814
 Commissioner of the Revenue - see ADM. Ch. 222
 Treasurer - see ADM. Ch. 224
 Payment of taxes by credit card - see ADM. 224.01
 Exemptions from penalty and interest - see B.R. & T. 864.01
 Erroneously assessed levies - see B.R. & T. 864.02

844.01 DEFINITIONS.

As used in this chapter, except where the context clearly indicates a different meaning:

- (a) "Affiliated group" shall have the same meaning ascribed to it in subdivision C.10 of Section 58.1-3703 of the Code of Virginia, except for the purposes of this chapter, the word "entity" shall be substituted for the word "corporation" whenever it is used in that section.
- (b) "CCF" means the volume of gas at standard pressure and temperature in units of 100 cubic feet.
- (c) "Commercial or industrial consumer" means the person who owns, leases or occupies property which is not residential in character or is used primarily for commercial or industrial purposes, including the owner of master metered apartment buildings who pays for utility service for such property.
(Ord. 00-09. Passed 10-16-00; Ord. 01-05. Passed 7-16-01.)
- (d) "Consumer" means every person who, individually or through agents, employees, officers, representatives or permittees, makes a taxable purchase of a utility service.
- (e) "E-911 system" means a telephone service which utilizes a computerized system to automatically route emergency telephone calls placed by dialing the digits "911" to the proper public safety answering point serving the County. An E-911 system includes selective routing of telephone calls, automatic telephone number identification, and automatic location identification performed by computers and other ancillary control center communications equipment.

- (f) "Enhanced services" means services that employ computer processing applications to act on the format, code, or protocol or similar aspects of the information transmitted; provide additional, different, or restructured information; or involve interaction with stored information.
- (g) "Gross charges" means, subject to the exclusions of this section, the amount charged or paid for the taxable purchase of utility service. However, "gross charges" shall not include the following:
 - (1) Charges or amounts paid for local telecommunication services that vary based on the distance and/or elapsed transmission time of the communication that are separately stated on the consumer's bill or invoice.
 - (2) Charges or amounts paid for customer equipment, including such equipment that is leased or rented by the customer from any source, if such charges or amounts paid are separately identifiable from other amounts charged or paid for the provision of local telecommunication services on the service provider's books and records.
 - (3) Charges or amounts paid for administrative services including, without limitation, service connection and reconnection, late payments, and roamer daily surcharges.
 - (4) Charges or amounts paid for special features that are not subject to taxation under Section 4251 of the Internal Revenue Code of 1986, as amended.
 - (5) Charges or amounts paid that are (i) the tax imposed by Section 4251 of the Internal Revenue Code of 1986, as amended, or (ii) any other tax or surcharge imposed by statute, ordinance or regulatory authority.
 - (6) Bad debts, which shall mean any portion of a debt related to the sale of utility services, the gross charges for which are not otherwise deductible or excludable, that has become worthless or uncollectible, as determined under applicable Federal income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the service provider shall report and pay the tax on that portion during the reporting period in which the payment is made.
- (h) "Group metered apartments" when used in conjunction with natural gas service means service applicable to any multiple-dwelling building or project comprised of four or more dwelling units supplied through one meter or a battery of meters.
- (i) "Interruptible service" when used in connection with natural gas service means service which is provided to any consumer on an interruptible basis, i.e. where the provider has the right to curtail or interrupt delivery of natural gas whenever, in the sole judgment of the provider, natural gas is not available for delivery.
- (j) "Kilowatt hours (kWh) delivered" means 1,000 watts of electricity delivered in a one-hour period by an electric provider to an actual consumer, except that in the case of eligible customer-generators (sometimes called cogenerators) as defined in Virginia Code §56-594, it means kWH supplied from the electric grid to such customer-generators, minus the kWh generated and fed back to the electric grid by such customer-generators.

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- (k) "Local commercial exchange telephone service" shall mean telephone service furnished the owner or tenant of property used for commercial or industrial purposes, but shall not include telephone service to rented residential units as provided in subdivision (l) of this section even though such may be commercial in nature.
- (l) "Local residential exchange telephone service" shall mean telephone service furnished the owner or tenant of private residential property or the tenant of an apartment who pays for telephone service to such property.
- (m) "Local telecommunication service" includes, without limitation, the two-way local transmission of messages through the use of switched local telephone services; telegraph services; teletypewriter; local cellular mobile radio telecommunication services; specialized mobile radio, stationary two-way radio, or any other form of two-way mobile and portable communications.
- (n) "Local telephone service" subject to the exclusions stated in this section, includes any service subject to Federal taxation as local telephone service as that term is defined in Section 4252 of the Internal Revenue Code of 1986, as amended, or any successor statute.
- (o) "Mobile local telecommunication service" means any two-way mobile or portable local telecommunication service, including cellular mobile radio telecommunication service and specialized mobile radio.
- (p) "Mobile service consumer" means a person having a telephone number for mobile local telecommunication service who has made a taxable purchase of such service or on whose behalf another person has made a taxable purchase of such service.
- (q) "Person" means individuals, firms, partnerships, associations, corporations or combinations of individuals of whatever form and character.
- (r) "Public safety agency" means a functional division of a public agency which provides firefighting, police, medical or other emergency services or a private entity which provides such services on a voluntary basis.
(Ord. 93-14. Passed 12-1-93.)
- (s) "Public safety answering point" means a communications facility operated on a twenty-four hour basis which first receives E-911 calls from persons in the E-911 service area and which may, as appropriate, directly dispatch public safety services or extend, transfer or relay E-911 calls to appropriate public safety agencies.
- (t) "Residential consumer" means the person who owns, leases or occupies property used primarily for residential or agricultural purposes, and who pays for utility service in or for such property.
- (u) "Seller" means every person, whether a public service corporation, political subdivision or private corporation, or not, who sells or delivers a utility service to a consumer within the County, and includes the term "service provider" as defined herein.

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- (v) "Service address" means the location of the telecommunication equipment from which the telecommunication is originated or at which the telecommunication is received by a consumer. If the service address is not a defined location, as in the case of mobile telephones, maritime systems, air-to-ground systems and the like, the service address shall mean the location of the subscriber's primary use of the telecommunication equipment within the licensed service area. A mobile service provider may obtain a signed statement from a consumer indicating which county, city or town within the licensed service area is the location of the consumer's primary use of the telecommunications equipment. A mobile service provider shall be entitled to rely absolutely on a consumer's signed statement and shall remit the taxes collected to the county, city or town identified by the consumer. In the absence of a signed statement by a consumer, a mobile service provider shall identify the county, city or town of the consumer's primary use based upon the consumer's billing address.
- (w) "Service provider" means every person engaged in the business of selling a utility service to a consumer.
- (x) "Taxable purchase" means the acquisition of utility services for consumption or use; however, taxable purchase does not include (i) the provision of telecommunications among members of an affiliated group of entities by a member of the group for their own exclusive use and consumption and (ii) the purchase of telecommunications for resale in the subsequent provision of telecommunications, including, without limitation, carrier access charges, right of access charges, and charges for use of intercompany facilities; however, the acquisition of telecommunications by a provider of enhanced services is not the purchase of telecommunications for resale, even when the cost of the telecommunications is separately stated to the purchaser of the enhanced services, as long as the primary object of the purchase of the telecommunications by the provider is for the provision of enhanced services and not telecommunications.
- (y) "Used primarily" refers to the larger portion of the use for which a utility service is furnished.
- (z) "Utility service" means local telecommunication service, electric service and gas service, excluding bottled gas, furnished within the County.
(Ord. 00-09. Passed 10-16-00; Ord. 01-05. Passed 7-16-01.)

844.02 AMOUNT OF TAX.

There is hereby imposed and levied by the County upon each and every consumer of a utility service a tax in the following amounts:

- (a) Residential Consumers.
 - (1) Local residential exchange telephone service: Such tax shall be nine percent of the first thirty dollars (\$30.00) of net charge per residential user per month, not to exceed two dollars and seventy cents (\$2.70) per month.
 - (2) Electric service: Such tax shall be sixty-three cents (\$0.63) per month, plus \$0.006804 per kilowatt hour (kWh) delivered monthly by a service provider, not to exceed two dollars and seventy cents (\$2.70) per month.

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- (3) Natural gas service: Such tax shall be sixty-three cents (\$0.63) per month, plus \$0.06485 per CCF delivered monthly by a service provider, not to exceed two dollars and seventy cents (\$2.70) per month.
- (b) Commercial or Industrial Consumers.
 - (1) Local commercial exchange telephone service: Such tax shall be eight percent of the first nine hundred dollars (\$900.00) of net charge per commercial or industrial user per month, not to exceed seventy-two dollars (\$72.00) per month.
 - (2) Electric service. Such tax shall be ninety-two cents (\$0.92) per month, plus \$0.005393 per kilowatt hour (kWh) delivered monthly by a service provider, not to exceed seventy-two dollars (\$72.00) per month.
 - (3) Natural gas service. Such tax shall be \$0.676 per month, plus \$0.03034 per CCF delivered monthly by a service provider, not to exceed seventy-two dollars (\$72.00) per month.
- (c) Natural Gas Service for Group Metered Apartments. Such tax shall be sixty-three cents (\$0.63) per month, plus \$0.00032 per CCF delivered monthly by a service provider, not to exceed two dollars and seventy cents (\$2.70) per month.
- (d) Interruptible Natural Gas Service. Such tax shall be eight dollars (\$8.00) per month, plus \$0.00094 per CCF delivered monthly by a service provider, not to exceed seventy-two dollars (\$72.00) per month.
- (e) Mobile Local Telecommunications Service. Such tax shall be nine percent of the first thirty dollars (\$30.00) of gross charge made by the service provider to the mobile service consumer, not to exceed two dollars and seventy cents (\$2.70) per month.

The conversion of tax to a monthly kWh delivered basis for electric service and a monthly CCF-delivered basis for natural gas service shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed shall be in effect.

(Ord. 00-09. Passed 10-16-00; Ord. 01-05. Passed 7-16-01.)

844.025 ADDITIONAL SPECIAL TAX.

In addition to the tax imposed in Section 844.02, there is hereby levied and imposed by the County upon each and every consumer of local telecommunication service, a special tax for enhanced emergency telephone service in the amount of two dollars (\$2.00) per telephone line per month. Any taxes imposed by this section shall be first utilized solely to recover the initial capital, installation and maintenance costs of the E-911 emergency telephone system and thereafter to offset recurring maintenance, repair and system upgrade costs and salaries or portions of salaries of dispatchers or call-takers which are directly attributable to the E-911 program only.

(Ord. 00-09. Passed 10-16-00; Ord. 01-05. Passed 7-16-01; Ord. 02-06. Passed 5-6-02.)

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844.03 COMPUTATION OF UTILITY SERVICE BILLS.

(a) Utility service bills shall be considered monthly bills if submitted twelve times annually for a period of approximately one month or a portion thereof. The tax for a bi-monthly electric or natural gas service bill (approximately sixty days) shall be determined as follows:

- (1) The kWh or CCF will be divided by two;
- (2) A monthly tax will be calculated on the amount determined by paragraph (a)(1) hereof using the rates set forth above;
- (3) The tax determined by paragraph (a)(2) hereof shall be multiplied by two; and
- (4) The tax in paragraph (a)(3) hereof may not exceed twice the monthly maximum tax.

(b) The tax for a bi-monthly telephone service bill (approximately sixty days) shall be determined as follows:

- (1) The charges subject to tax will be divided by two;
- (2) A monthly tax will be calculated on the amount determined by paragraph (b)(1) hereof using the rates set forth above;
- (3) The tax determined by paragraph (b)(2) hereof shall be multiplied by two; and
- (4) The tax in paragraph (b)(3) hereof may not exceed twice the monthly maximum tax. If a bill is submitted by any seller for more than two months of utility service, the amount of such bill to be used in computing the tax shall be 30.4 times the "daily rate". The "daily rate" shall be determined by dividing the net charges allowed herein by the number of days for which such bill is submitted. (Ord. 00-09. Passed 10-16-00; Ord. 01-05. Passed 7-16-01.)

844.04 DUTY OF SELLER GENERALLY; COMPUTATION OF TAX; RECORDS.

(a) Every seller shall, in acting as the tax collecting medium or agency for the County, collect from the consumer for the use of the County the tax hereby imposed and levied at the time of collecting the purchase price charged therefor, and the taxes collected during each calendar month shall be reported by each seller to the County Commissioner of the Revenue and, simultaneously, each seller shall remit to the County Commissioner of the Revenue the amount of tax shown by such report to have been collected. Such amount shall be remitted on or before the first day of the second calendar month thereafter, together with the name and address of any consumer who has refused to pay his tax. The taxes collected shall be deemed to be held in trust by the seller until remitted to the County. Until the consumer pays the tax to the seller, the tax shall constitute a debt of the consumer to the County. The required reports shall be in the form prescribed by the County Commissioner of the Revenue. The tax levied or imposed under this chapter, with respect to the purchase of any gas or electric service, shall become effective on bills rendered on meter readings on and after June 1, 1971, with respect to local telephone service, on charges first appearing on bills rendered on and after June 1, 1971; with respect to E-911 service on charges first appearing on bills rendered on and after March 1, 1992; and with respect to mobile local telecommunication service, on charges first appearing on bills rendered on and after November 1, 2001.

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(b) In all cases where the seller collects the price for utility service in stated periods, the tax imposed and levied by this chapter shall be computed on the amount of purchase during the month or period according to each bill rendered. The amount of tax to be collected shall be computed to the nearest whole cent.

(c) Each and every seller shall keep complete records showing all purchases in the County, which records shall show the price charged against each consumer with respect to each purchase, and date thereof, the date of payment thereof and the amount of tax imposed hereunder. Such records shall be kept open for inspection by the duly authorized agents of the County at reasonable times. Such duly authorized agents shall have the right, power and authority to make such transcripts thereof during such times as they may desire.

(d) Any seller responsible for accounting for and remitting the E-911 tax levied by Section 844.025 shall be allowed three percent of the amount due and accounted for in the form of a deduction from the tax due, provided the required report is timely filed and the remittance of tax is made within the time specified in Section 844.04(a).

(Ord. 00-09. Passed 10-16-00; Ord. 01-05. Passed 7-16-01.)

844.05 COLLECTION OF TAXES FROM SELLER.

The Commissioner of the Revenue is hereby authorized and directed to collect the taxes levied and imposed under this chapter and shall cause the same to be paid over to the Treasurer, who shall deposit the same into the General Fund of the County, except as provided in Section 844.025.

(Ord. 93-14. Passed 12-1-93; Ord. 01-05. Passed 7-16-01.)

844.06 EXCEPTIONS TO CHAPTER.

(a) The tax imposed and levied by this chapter on purchases with respect to local telecommunications service shall apply to all charges made for local telephone exchange services subject to Federal taxation, except local messages which are paid for by inserting coins in coin-operated telephones.

(b) A consumer of individual telephone service who resides in a nursing home or similar adult care facility is hereby exempted from the payment of the tax imposed by Section 844.025 of this chapter.

(c) The United States of America diplomatic personnel exempted by the laws of the United States, this State and the political subdivisions, boards, commissions and authorities thereof, are hereby exempted from the payment of the tax imposed and levied by this chapter with respect to the purchase of utility services used by such governmental agencies.

(d) Public safety agencies as defined in this chapter shall be exempt from the levy for E-911 service imposed under Section 844.025.

(Ord. 93-14. Passed 12-1-93; Ord. 01-05. Passed 7-16-01.)

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844.07 VIOLATIONS.

- (a) No person shall fail, refuse or neglect to pay the tax imposed or levied by this chapter.
- (b) No seller shall fail, refuse or neglect to collect, report or remit the taxes imposed or levied by this chapter.
- (c) A conviction for a violation of any of the provisions of this chapter shall not relieve any person from the payment, collection and remittance of such tax as provided by this chapter. (Ord. 93-14. Passed 12-1-93.)

844.99 PENALTY.

- (a) Delinquency Fee and Interest. If any service provider fails or refuses to remit to the Commissioner of the Revenue the report required to be filed or the tax required to be collected and paid under this chapter within the time and in the amount specified in this chapter, there shall be added to such tax by the Treasurer of the County a delinquency fee of ten percent of the tax amount due. Further, if the tax remains delinquent and unpaid, there may be added to such tax by the Treasurer interest at the rate of ten percent per year, computed as provided in Section 860.03.
- (b) Whoever violates or fails to comply with any of the provisions of this chapter, or any regulation promulgated pursuant thereto, shall be fined not more than one thousand dollars (\$1,000) for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues. The punishment provided for in this section shall be in addition to any other remedy for the collection of taxes provided for by law. (Ord. 01-05. Passed 7-16-01; Ord. 04-07. Passed 4-20-04; Ord. 04-10. Passed 6-8-04.)

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